STATEMENT OF

JOSEPH THOMPSON

UNDER SECRETARY FOR BENEFITS

DEPARTMENT OF VETERANS AFFAIRS

BEFORE THE

SUBCOMMITTEE ON BENEFITS

HOUSE COMMITTEE ON VETERANS' AFFAIRS

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Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify today on several legislative items of great interest to veterans. Accompanying me today is Dr. John Feussner, Chief Research and Development Officer.

H.R. 862

The first measure I will discuss, Mr. Chairman, is H.R. 862. This bill would amend section 1116 of title 38, United States Code, by adding diabetes mellitus (Type 2) to the list of diseases presumed to be service connected in veterans exposed to certain herbicide agents. In view of final rules recently issued by VA concerning this subject, we believe this bill is not necessary.

Section 1116(b)(1) of title 38, United States Code, directs VA to establish presumptions of service connection for diseases shown to have a "positive association" with exposure to herbicide agents. On May 8, 2001, VA published in

the Federal Register a final rule which adds Type 2 diabetes to the regulatory list, contained in 38 C.F.R. § 3.309(e), of diseases VA presumes to be service connected in veterans exposed to certain herbicide agents in service. This final rule effectuates the purpose of H.R. 862.

Section 1116(a)(1)(B) of title 38, United States Code, expressly establishes a presumption of service connection for each disease that "the Secretary determines in regulations prescribed under this section warrants a presumption of service-connection by reason of having a positive association with exposure to an herbicide agent." Inasmuch as the statute already incorporates by reference the diseases identified in VA regulations issued pursuant to section 1116, and VA has included diabetes mellitus, Type 2 in those regulations, we believe it is unnecessary to amend section 1116 to specifically mention diabetes mellitus, Type 2.

Congress has not amended section 1116 to include specific reference to each disease for which VA has previously established a presumption of service connection by regulation. For example, in 1996, VA issued a final rule establishing presumptions of service connection for prostate cancer and acute and subacute peripheral neuropathy in veterans exposed to certain herbicide agents. We see no need for legislative action ratifying these regulatory determinations.

Because H.R. 862 would merely reiterate requirements of existing statute and regulation, its enactment would result in no additional costs to VA.

H.R. 1406

The "Gulf War Undiagnosed Illness Act of 2001," H.R. 1406, would amend section 1117 of title 38, United States Code, which governs compensation for

certain Gulf War veterans. We cannot support the enactment of section 2 of this bill, but we support the enactment of section 3.

Section 2 of H.R. 1406 would amend section 1117 to include "fibromyalgia, chronic fatigue syndrome, a chronic multisymptom illness, or any other ill-defined illness (or combination of ill-defined illnesses)" among the illnesses for which a presumption of service connection may be established for resulting chronic disability suffered by Gulf War veterans. Currently, section 1117 provides that the Secretary may pay compensation to any Gulf War veteran suffering from a chronic disability resulting from an undiagnosed illness (or combination of undiagnosed illnesses) that became manifest during active service in the Southwest Asia theater of operations during the Gulf War or became manifest to a compensable degree within a presumptive period (currently ending on December 31, 2001) as determined by regulation.

With regard to fibromyalgia and chronic fatigue syndrome, under current law service connection may be established on a direct basis for disability resulting from either of these conditions. Each is recognized as diagnosable under VA's schedule for rating disabilities. Accordingly, we cannot support the inclusion of either condition in section 1117. With regard to other "conditions" that would be added by section 2, the descriptions of those conditions ("chronic multisymptom illness" and "any other ill-defined illness") are very vague and would result in great uncertainty regarding proper implementation. The Department is pursuing multiple research initiatives intended to identify diseases or conditions that may be associated with service in the Gulf. The results of this research will provide a scientific foundation for decisions on possible presumptive service-connection of diseases or conditions found in veterans of the Persian Gulf War.

Section 3 of the bill would authorize the Secretary, with respect to medical research projects sponsored by VA, to render a determination that medical

information derived directly or indirectly from the participation in such a project by a Gulf War veteran who is in receipt of disability compensation under either section 1117 or 1118 of title 38, United States Code, may not be used in adjudicating such veteran's entitlement to such compensation. Such determination would be based on a finding that it is necessary for the conduct of the project that Gulf War veterans participate without fear of loss of compensation. The Secretary would be required to publish in the Federal Register a notice of each determination made under this authority with respect to each medical research project concerned. This authority would be available for the Secretary's use with respect to any VA medical research project whether commenced before, on, or after the date of enactment of the bill.

Veterans who suffer from undiagnosed illnesses should not be discouraged from participation in significant research projects that may result in a better understanding of illnesses associated with Gulf War service or in beneficial treatment of their disabling conditions. In addition, if significant numbers of Gulf War veterans who suffer from undiagnosed illnesses refuse to participate in such research projects out of fear that their entitlement to compensation may be adversely affected, the results of such studies may be rendered unreliable. Accordingly, Mr. Chairman, we support this provision.

H.R. 1406 is subject to the PAYGO requirements of the Omnibus Budget Reconciliation Act of 1990, and, if enacted, it would increase direct spending. We estimate that enactment of H.R. 1406 would result in benefit costs of $15.3 million in Fiscal Year 2002 and a total benefit cost of $87.4 million for the five-year period from FY 2002 through FY 2006. In addition, we estimate that administrative costs associated with enactment of this provision would total $819,000 during that five-year period. Because undiagnosed illnesses of Gulf War veterans are already subject to a presumption of service connection under 38 U.S.C. § 1117 and it is not clear whether any additional illness would be service connected as an "ill-defined illness," the estimates reflected above relate

only to the addition of fibromyalgia and chronic fatigue syndrome as new presumptive conditions under that section.

H.R. 1435 & H.R. 1746

H.R. 1435 and H.R. 1746 address the same basic issue, Mr. Chairman, so I will discuss these two measures together. Both bills deal with VA having a centralized toll-free telephone number that enables veterans Nationwide to receive complete and accurate information regarding benefits for veterans from not only VA but also from a variety of Federal and state agencies.

Although we fully support this goal, we are unable to support H.R. 1435 and believe we are already in substantial compliance with the implied mandate of H.R. 1746.

H.R. 1435 would authorize the Secretary to award a grant to a private, nonprofit entity to develop and operate a national, toll-free telephone hotline to provide information and assistance to veterans and their families. This hotline would provide general information about VA benefits, and also provide crisis intervention counseling, information regarding emergency shelter and food, substance-abuse rehabilitation, employment training and opportunities, and small business assistance programs.

H.R. 1746 would require VA to provide a single toll-free phone number to enable the public to have access to veterans benefits counselors. The Secretary must ensure that these counselors have information about veterans benefits provided by all Federal and state agencies.

We would first note, Mr. Chairman, that the Veterans Benefits Administration has had a national toll-free number, 1-800-827-1000, since 1993. This number is listed in the blue pages of telephone books under the heading

"benefits information." Veterans call this number every day and receive information not only about VBA benefits, but also benefits administered by the Veterans Health Administration and the National Cemetery Administration as well as benefits offered by other Federal and State agencies.

VBA's telecommunications concept is based on three customer service objectives:

- Accessibility (the call gets through);
- Responsiveness (get call to the right place); and
- Reliability (VA gives the correct answer).

Our goals for our telephone system include:

- Reduce blocked calls to 1 percent;
- Reduce abandoned calls to 2 percent;
- Reduce the volume of calls and misdirected calls; and
- Direct calls to program experts based on business rules.

While VA believes our efforts substantially comply with the intent of H.R. 1746, we recognize that there is more we can do. For this reason, we continue to monitor and modify our telephone service to ensure veterans receive the highest quality service from VA consistent with these goals and objectives. In May, the Secretary directed the Department to explore establishing a cost-effective centralized call center available on a 24/7 basis which would be able to respond to general inquiries about the full range of veterans benefits and health care services. That study is ongoing and will be completed shortly. VBA is also currently implementing initiatives, such as Virtual Information Center and Case Call Routing, that will improve telephone service and utilize our Veterans Service Representatives more efficiently. Case Call Routing will allow callers to call their case management team. Virtual Information Centers (VIC) allows us to adopt a Service Delivery Network (SDN) strategy to handle general calls.

We also developed the State Benefit Reference System in FY 2001. This system provides VA employees computer-based information about veterans benefits offered by State agencies. We are investigating the development of a similar system for VA and non-VA federal benefits for use by VA counselors and veterans self-service on the internet.

VA should have the flexibility to use the latest technologies in a way that will be of the greatest assistance to our veterans and other customers. Certain types of benefit issues may require a separate toll-free number to direct calls to subject-matter experts. In addition, the issue as to whether a private entity, as envisioned by H.R. 1435, rather than VA personnel should operate such a system requires further study.

We would be pleased to meet with your staff and discuss VA telecommunications concerns and initiatives.

H.R. 2359

VA supports the enactment of H.R. 2359, if the bill's PAYGO costs of $15 million over five years can be accommodated within the budget limits agreed to by the President and the Congress.

Section 1 of H.R. 2359 would authorize the payment of unclaimed National Service Life Insurance (NSLI) and United States Government Life Insurance (USGLI) proceeds to an alternate beneficiary. VA supports the enactment of section 1 of this bill.

Under current law, there is no time limitation under which a named beneficiary of an NSLI or USGLI policy is required to file a claim for proceeds. Consequently, when the insured dies and the beneficiary does not file a claim for the proceeds, VA is required to hold the unclaimed funds indefinitely in order to

honor any possible future claims by the beneficiary. VA holds the proceeds as a liability. While extensive efforts are made to locate and pay these individuals, there are cases where the beneficiary simply cannot be found. Under current law, we are not permitted to pay the proceeds to a contingent or alternate beneficiary unless we can determine that the principal beneficiary predeceased the policyholder. Consequently, payment of the proceeds to other beneficiaries is withheld.

A majority of the existing liabilities of unclaimed proceeds were established over ten years ago. As time passes, the likelihood of locating and paying the principal beneficiary becomes more remote. In fact, the older the liability becomes, the more unlikely it is that it will ever be paid even though other legitimate heirs of the insured have been located.

This bill would grant the Secretary authority to authorize payment of NSLI and USGLI proceeds to an alternate beneficiary when the proceeds have not been claimed by the named beneficiary within two years following the death of the policyholder or within two years of this bill's enactment, whichever is later. The principal beneficiary would have two years following the death of the insured to file a claim. Afterwards, a contingent beneficiary would then have two years to file a claim. Payment would be made as if the principal beneficiary had predeceased the insured. If there is no contingent beneficiary to receive the proceeds, payment would be made to those equitably entitled, as determined by the Secretary. As occurs under current law, no payment would be made if payment would escheat to a State. Such payment would be a bar to recovery of the proceeds by any other individual.

Section 1 of H.R. 2359 would apply retroactively as well as prospectively, and is similar to the time-limitation provisions of the Servicemembers' and Veterans' Group Life Insurance programs and the Federal Employees Group Life Insurance program.

Insofar as payment to beneficiaries is made from the insurance trust funds, there are no direct appropriated benefit costs associated with this section. The liabilities are already set aside and would eventually be paid, either as payment to beneficiaries that eventually claim the proceeds, or released from liability reserves and paid as dividends.

There are approximately 4,000 existing policies in which payment has not been made due to the fact that we cannot locate the primary beneficiary, despite extensive efforts. Over the years, the sum of moneys held has aggregated to approximately $23 million. On a yearly basis, about 200 additional policies (with an average face value of $9600, or approximately $1.9 million annually) are placed into this liability because the law prohibits payment to a contingent beneficiary or to the veteran's heirs. It is estimated that approximately two-thirds of the 4,000 policies will eventually be paid as a result of this legislation. Additionally, in anticipation of the fact that about one-third of these policies will not be able to be paid, nearly $7 million has already been released to surplus and available for dividend distribution.

This section is subject to the PAYGO requirements of the Omnibus Budget Reconciliation Act of 1990, and, if enacted, it would increase direct spending. The Administration estimates that its enactment would result in PAYGO costs of $15 million during Fiscal Years 2002-2006 and a total of $25 million during Fiscal Years 2002-2011.

Adjudication of these 4,000 policies would entail administrative costs of approximately $154,000, representing two full-time employee equivalence (FTE) in claims processing and support. Approximately 94 percent of this cost would be reimbursed to the Veterans Benefits Administration's General Operating Expense (GOE) account from the surplus of the trust funds, leaving about $9,000 in government costs (which assumes that about six percent of the policies are

Service-Disabled Veterans Insurance, which has no surplus and for which appropriated funds are used to cover administrative costs).

Section 2 of H.R. 2359 would extend, by 4 years, the sunset for the VA's direct loan program for Native American veterans living on trust lands. VA strongly supports this program, and favors enactment of this provision.

The Native American veteran direct loan program, which was enacted in October 1992, has enjoyed limited success. VA has made over 200 loans under this program to Native American veterans. The majority of these loans have been to Native Hawaiians. This program is currently set to expire December 31, 2001. This provision extends the program until December 31, 2005.

VA recently participated in the Executive Branch's One-Stop Mortgage Initiative, which was an effort to develop a more consistent approach to delivering home ownership opportunities to Native Americans. VA is hopeful that this initiative will increase opportunities and remove barriers to participation in the VA loan program for Native American veterans living on trust lands. VA is also aware of efforts by the Federal National Mortgage Association to increase private-sector lender willingness to make loans on tribal lands.

VA believes a four-year extension of the Native American veteran direct loan program would give both the Executive Branch and the Congress an opportunity to see how various initiatives regarding Native American housing loans affect the ability of these veterans to obtain VA financing, and whether further program modifications are indicated.

H.R. 2359 would also make two changes to the current law.

First, the bill would permit VA to make loans to members of a Native American tribe that has entered into a memorandum of understanding (MOU)

with another Federal agency if that MOU contemplates loans made by VA and the MOU generally conforms to the requirements of the law governing the VA program. Current law requires a tribe to enter into an MOU with VA before we can make loans to members of that tribe.

The bill would also modify the current requirement that all VA loan and security instruments contain, on the first page of each such document, in letters two-and-a-half times the size of the regular type face used in the document, a statement that the loan is not assumable without the approval of VA. H.R. 2359 would require that this notice appear conspicuously on at least one instrument (such as a VA rider) under guidelines established by VA in regulations.

Those two amendments would implement recommendations by the One-Stop Initiative. These changes would reduce the administrative burden on Indian housing authorities and bring more uniformity in federal loan program processing procedures. Eliminating the requirement for a separate MOU between each tribe and VA should expand the number of Native American veterans eligible for VA financing. The extremely strict loan assumption notice requirement in the current law has prevented VA from approving the use of uniform loan instruments now used in FHA, “Fannie Mae,” and “Freddie Mac” transactions.

We recommend that section 2 of H.R. 2359 be further amended to repeal the requirement that VA outstation, on a part-time basis, Loan Guaranty specialists at tribal facilities if requested to do so by a tribe. We have consolidated loan processing and servicing operations from 46 regional offices to nine Regional Loan Centers, and do not have the resources to outstation loan personnel at various tribal locations. VA continues to make periodic outreach visits to all tribes, and provides training to tribal housing authorities. We believe that we can provide all necessary services to Native American veterans seeking VA housing loans without outstationing employees in remote tribal locations.

We estimate that enactment of section 2 of H.R. 2359 would not require any additional appropriation of loan subsidy. Public Law No. 102-389 appropriated $4.5 million "to remain available until expended" to subsidize gross obligations for direct loans to Native American veterans of up to $58.4 million. We estimate that sufficient funds would be available to cover projected Native American veteran loan volume until at least FY 2005. This section is subject to the PAYGO requirements of the Omnibus Budget Reconciliation Act of 1990, but we estimate the annual cost to be less than $500,000 annually over five years.

Section 3 of H.R. 2359 would eliminate the requirement for appellants to furnish the Secretary of Veterans Affairs with a copy of the notice of appeal filed with the United States Court of Appeals for Veterans Claims (CAVC). VA supports the enactment of section 3 of this bill.

Section 7266(a) of title 38, United States Code, provides that a claimant adversely affected by a decision of the Board of Veterans' Appeals (Board) must file a notice of appeal with the CAVC within 120 days after the date on which the Board mailed notice of the decision to the appellant, in order to obtain review of the Board's decision. Subsection (b) of section 7266 requires such a claimant to furnish VA with a copy of the notice of appeal that he or she files with the CAVC.

Failure to comply with the requirement to file a notice of appeal with the CAVC within 120 days of receiving notice of an adverse Board decision ordinarily will result in a dismissal of the appeal for lack of jurisdiction. Unfortunately, in a number of instances, appellants have mailed their notices of appeal to VA, but not to the CAVC, thinking that they have complied with the statute. Some such appeals have been dismissed because the notices of appeal were not received by the CAVC within the required 120 days. We believe that removal of the requirement that an appellant furnish the Secretary with a copy of his or her notice of appeal will clarify to which entity the notice must be provided, thereby resulting in fewer cases in which appellants, through inadvertence, lose their

opportunity to appeal. Removal of this notice requirement will not impair VA's ability to respond to those appeals that are properly filed with the CAVC, because the court routinely notifies VA when an appeal has been docketed. This notice is normally provided to VA within a day or two of the receipt by the CAVC of the veteran's notice of appeal.

There would be no costs associated with the enactment of this section.

H.R. 1929

Mr. Chairman, H.R. 1929 would also extend the sunset for the Native American veteran housing loan program and amend the requirements concerning MOUs. Unlike section 2 of H.R. 2359, it does not address the loan assumption notice. Accordingly, Mr. Chairman, we prefer the language of H.R. 2359, with the additional amendment we have recommended.

H.R. 2361

The "Veterans' Compensation Cost-of-Living Adjustment Act of 2001," H.R. 2361, would authorize a cost-of-living adjustment (COLA) for Fiscal Year 2002 in the rates of disability compensation and dependency and indemnity compensation (DIC). Section 2 of this bill would direct the Secretary of Veterans Affairs to increase administratively the rates of compensation for service-disabled veterans and of DIC for the survivors of veterans whose deaths are service related, effective December 1, 2001. As provided in the President's FY 2002 budget request, the rate of increase would be the same as the COLA that will be provided under current law to veterans' pension and Social Security recipients, which is currently estimated to be 2.5 percent.

We estimate that enactment of this section would cost $376 million during FY 2002, $7.1 billion over the period FYs 2002-2006 and $28.5 billion over the

period FYs 2002-2011. Although this section is subject to the PAYGO requirement of the Omnibus Budget Reconciliation Act of 1990 (OBRA), the PAYGO effect would be zero because OBRA requires that the full compensation COLA be assumed in the baseline. We believe this proposed COLA is necessary and appropriate in order to protect the benefits of affected veterans and their survivors from the eroding effects of inflation. These worthy beneficiaries deserve no less.

Mr. Chairman, this concludes my statement. I will be pleased to respond to any questions you or the members of the Subcommittee may have.